

AMENDED IN SENATE JUNE 1, 2000
AMENDED IN ASSEMBLY MAY 2, 2000

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 2397

Introduced by Assembly Member Maddox

February 24, 2000

An act to amend *Section 27491.45 of the Government Code*, and to amend Sections 7153, 7153.5, 7154, and 7155 of the Health and Safety Code, relating to dead bodies.

LEGISLATIVE COUNSEL'S DIGEST

AB 2397, as amended, Maddox. Anatomical gifts.

(1) *Existing law provides that the coroner shall have the right to retain tissues of the body removed at the time of autopsy as may, in the opinion of the coroner, be necessary or advisable for scientific investigation unless certain conditions are met. Existing law further provides that these tissues may be submitted by the coroner to specified entities for training, educational, or research purposes.*

This bill would instead authorize a coroner to submit these tissues to the entities specified only upon the consent of the decedent or other authorized person.

(2) Existing law, the Uniform Anatomical Gift Act, authorizes the coroner or medical examiner to release and permit the removal of a part from a body within that official's custody for transplantation, therapy, or reconditioning when certain requirements are met. Existing law provides that if an

anatomical gift is made to a designated donee, the document of gift, or a copy, may be delivered to the donee and may be deposited in any hospital, procurement organization, or registry office that accepts it for safekeeping or for facilitation of procedures after death.

This bill would instead authorize the deposit of the document of gift in any hospital, accredited medical or dental school, college, or university, or, in the event that the gift is for transplantation or therapy only, to a procurement organization.

~~(2)–~~

(3) Existing law provides that if a donee accepts an anatomical gift of an entire body, the donee, subject to the terms of the gift, may allow embalming and use of the body in funeral services.

The bill would require the donee, upon request of specified persons, to return the cremated remains of the donor at no cost to the person requesting the remains, and would make it a crime for a person to knowingly return the cremated remains of a person other than the donor to a person requesting the remains. By creating a new crime, this bill would impose a state-mandated local program.

~~(3)–~~

(4) Existing law prohibits a person from knowingly, for valuable consideration, purchasing or selling a part for transplantation, therapy, or reconditioning if removal of the part is intended to occur after the death of the decedent. Existing law also provides that valuable consideration does not include reasonable payment for the removal, processing, disposal, preservation, quality control, storage, transplantation, or implantation of a part. Violation of these provisions is a crime.

This bill would ~~include research and any other purpose among the purposes for which a person is prohibited from purchasing or selling a part~~ *prohibit a person, for valuable consideration, from purchasing or selling a part for research or any other use without authorization if removal of the part is intended to occur after the death of the decedent, and would exclude transportation as valuable consideration for purposes of both of these* ~~provisions prohibitions. By changing~~

~~and expanding the definition of creating a new crime, this bill would impose a state-mandated local program.~~

~~(4)~~

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. *Section 27491.45 of the Government*
2 *Code is amended to read:*

3 27491.45. (a) (1) The coroner shall have the right to
4 retain tissues of the body removed at the time of autopsy
5 as may, in the opinion of the coroner, be necessary or
6 advisable for scientific investigation.

7 ~~Such tissues~~

8 (2) *Tissues retained pursuant to paragraph (1)* may be
9 submitted by the coroner to hospitals, medical
10 educational research institutions, and law enforcement
11 agencies for training, educational, and research purposes:

12 ~~However, the provisions of this subdivision shall not~~
13 ~~apply if (1) the tissues of the body sought to be retained~~
14 ~~are those of a patient who has died in a state hospital, and~~
15 ~~(2) if the patient requested that such provisions shall not~~
16 ~~apply, or, absent the request of the patient, if permission~~
17 ~~for such retention is not received by the coroner from the~~
18 ~~person responsible for the disposition of the body, as~~
19 ~~specified in Section 7151.5 of the Health and Safety Code,~~
20 ~~only upon consent of the decedent or other person, as~~
21 ~~specified in Section 7151.~~

22 (b) The coroner may, in his or her discretion, allow
23 removal of parts of the body by a licensed physician and
24 surgeon or trained transplant technician for transplant, or
25 therapeutic, or scientific purposes pursuant to Chapter
26 3.5 (commencing with Section 7150) of Part 1 of Division

1 7 of the Health and Safety Code, *only* if the following
2 conditions are met:

3 (1) The provision of the part will not unnecessarily
4 mutilate the body or interfere with the autopsy.

5 (2) The decedent or other person, as specified in
6 Section ~~7151.5~~ 7151 of the Health and Safety Code, has
7 consented to the provision of the part, as prescribed by
8 Section 7154 of the Health and Safety Code. ~~If the~~
9 ~~decedent has not made such a gift of a part of his or her~~
10 ~~body, the coroner, or a person designated by the coroner,~~
11 ~~shall make diligent efforts to locate and secure such gift~~
12 ~~within 24 hours of the decedent's death from an~~
13 ~~appropriate person specified in Section 7151.5 of the~~
14 ~~Health and Safety Code.~~ In obtaining such *this* gift, the
15 coroner shall notify the donor of the specific part or parts
16 requested and shall obtain the donor's informed consent,
17 as provided in subdivision (e) of Section 7154.

18 (c) Nothing in this section shall be construed as
19 limiting any right provided for in Section 7151.7 of the
20 Health and Safety Code.

21 (d) For purposes of this section, "trained transplant
22 technician" means a person who has completed training
23 in tissue removal for transplant or therapeutic, or
24 scientific purposes, which the coroner determines to be
25 adequate for the purposes.

26 SEC. 2. Section 7153 of the Health and Safety Code is
27 amended to read:

28 7153. (a) Only the following persons may become
29 donees of anatomical gifts for the purposes stated:

30 (1) A hospital, physician, surgeon, or procurement
31 organization, for transplantation, therapy, medical or
32 dental education, research, or advancement of medical or
33 dental science.

34 (2) An accredited medical or dental school, college, or
35 university for education, research, or advancement of
36 medical or dental science.

37 (3) A designated individual for transplantation or
38 therapy needed by that individual.

39 (4) In the case of a pacemaker, a person who
40 reconditions pacemakers.

(b) An anatomical gift may be made to a designated donee or without designating a donee. If a donee is not designated or if the donee is not available or rejects the anatomical gift, the anatomical gift may be accepted by any hospital or, in the case of a pacemaker, the pacemaker may be accepted by any person who reconditions pacemakers.

(c) If the donee knows of the decedent's refusal or contrary indications to make an anatomical gift or that an anatomical gift by a member of a class having priority to act is opposed by a member of the same class or a prior class under subdivision (a) of Section 7151, the donee may not accept the anatomical gift.

~~SEC. 2.—~~

SEC. 3. Section 7153.5 of the Health and Safety Code is amended to read:

7153.5. (a) Delivery of a document of gift during the donor's lifetime is not required for the validity of an anatomical gift.

(b) If an anatomical gift is made to a designated donee, the document of gift, or a copy, may be delivered to the donee to expedite the appropriate procedures after death. The document of gift, or a copy, may be deposited in any hospital, accredited medical or dental school, college, or university, or, in the event that the gift is for transplantation or therapy only, to a procurement organization that accepts it for safekeeping or for facilitation of procedures after death. On request of an interested person, upon or after the donor's death, the person in possession shall allow the interested person to examine or copy the document of gift.

~~SEC. 3.—~~

SEC. 4. Section 7154 of the Health and Safety Code is amended to read:

7154. (a) Rights of a donee created by an anatomical gift are superior to rights of others except with respect to autopsies under subdivision (b) of Section 7155.5. A donee may accept or reject an anatomical gift. If a donee accepts an anatomical gift of an entire body, the donee, subject to the terms of the gift, may allow embalming and

1 use of the body in funeral services. If the gift is of a part
2 of a body or a pacemaker, the donee, upon the death of
3 the donor and before embalming, shall cause the part or
4 pacemaker to be removed without unnecessary
5 mutilation. After removal of the part or pacemaker,
6 custody of the remainder of the body vests in the person
7 specified in Section 7100.

8 (b) The time of death must be determined by a
9 physician or surgeon who attends the donor at death or,
10 if none, the physician or surgeon who certifies the death.
11 Neither the physician or surgeon who attends the donor
12 at death nor the physician or surgeon who determines the
13 time of death may participate in the procedures for
14 removing or transplanting a part unless the document of
15 gift designates a particular physician or surgeon pursuant
16 to subdivision (d) of Section 7150.5.

17 (c) If there has been an anatomical gift, a technician
18 may remove any donated parts and an enucleator may
19 remove any donated eyes or parts of eyes, after
20 determination of death by a physician or surgeon.

21 (d) ~~Following~~ *For all donations made pursuant to an*
22 *instrument of gift executed after January 1, 2001,*
23 *following* the final disposition of the remains of the donor,
24 upon request of a person specified in subdivision (a) of
25 Section 7151, the donee shall return the cremated
26 remains of the donor at no cost to the person specified in
27 subdivision (a) of Section 7151, *unless the donor has*
28 *previously designated otherwise in the instrument of gift.*
29 A person who knowingly returns the cremated remains
30 of a person other than the donor to a person specified in
31 subdivision (a) of Section 7151 shall be punished by
32 imprisonment in the county jail for not more than one
33 year.

34 ~~SEC. 4.—~~

35 *SEC. 5.* Section 7155 of the Health and Safety Code is
36 amended to read:

37 7155. (a) A person may not knowingly, for valuable
38 consideration, purchase or sell a part for transplantation,
39 therapy, *or* reconditioning, ~~research, or for any other~~

1 ~~purpose~~, if removal of the part is intended to occur after
2 the death of the decedent.

3 (b) A person may not, for a valuable consideration,
4 purchase or sell a part for research or any other use
5 without authorization, if the removal of the part is
6 intended to occur after the death of the decedent. For
7 purposes of this subdivision, "without authorization"
8 means either in violation of the wishes of the donor as
9 expressed in the instrument of gift, or without
10 authorization of the donee.

11 (c) Valuable consideration does not include
12 reasonable payment for costs associated with the
13 removal, processing, disposal, preservation, quality
14 control, storage, transplantation, transportation, or
15 implantation of a part.

16 ~~(e)~~

17 (d) A person who violates this section is guilty of a
18 felony and upon conviction shall be punished by
19 imprisonment in the state prison for three, five, or seven
20 years, a fine not exceeding fifty thousand dollars
21 (\$50,000), or both.

22 ~~SEC. 5.~~

23 SEC. 6. No reimbursement is required by this act
24 pursuant to Section 6 of Article XIII B of the California
25 Constitution because the only costs that may be incurred
26 by a local agency or school district will be incurred
27 because this act creates a new crime or infraction,
28 eliminates a crime or infraction, or changes the penalty
29 for a crime or infraction, within the meaning of Section
30 17556 of the Government Code, or changes the definition
31 of a crime within the meaning of Section 6 of Article
32 XIII B of the California Constitution.